

AMENDED IN SENATE JULY 1, 2009
AMENDED IN SENATE JUNE 25, 2009
AMENDED IN ASSEMBLY JUNE 1, 2009
AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 846

Introduced by Assembly Member Torrico

February 26, 2009

An act to add Sections 25196.5 and 42402.6 to the Health and Safety Code, to add Section 6437 to the Labor Code, and to add Section 13363 to the Water Code, relating to civil and administrative penalties.

LEGISLATIVE COUNSEL'S DIGEST

AB 846, as amended, Torrico. State agencies: civil and administrative penalties.

The Administrative Procedure Act contains provisions governing the conduct of administrative adjudication for state agencies.

This bill would require the Department of Toxic Substances Control, the State Air Resources Board, the Department of Industrial Relations, and the State Water Resources Control Board to ~~adjust~~ *update* the maximum and minimum amounts of specified civil and administrative penalties ~~to take into account for inflation on an annual basis~~ using the Consumer Price Index, as provided. The bill would require, if a penalty below these maximum levels is sought, that the penalty be assessed, at a minimum, at a level that recovers economic benefits derived by the violator, except as specified. Because local air districts and unified

program agencies would be subject to this requirement, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as the
2 California Civil Penalties Inflation Supplement and Enforcement
3 Act of 2009.

4 SEC. 2. Section 25196.5 is added to the Health and Safety
5 Code, to read:

6 25196.5. (a) (1) The department shall ~~adjust on an annual~~
7 ~~basis update, by February 15, 2010, and on January 1 annually~~
8 ~~thereafter,~~ all civil and administrative penalties imposed pursuant
9 to this chapter to adjust the maximum and minimum amounts
10 specified in this chapter ~~to take into account inflation using for~~
11 ~~inflation, as established by the amount by which the Consumer~~
12 ~~Price Index for the month of June of the year prior to the~~
13 ~~adjustment as compared with exceeds the Consumer Price Index~~
14 ~~for June of the calendar year in which legislation was last enacted~~
15 ~~establishing or amending the amount of the penalty.~~

16 (2) The amount of any penalties determined pursuant to this
17 subdivision shall be rounded as follows:

18 (A) To the nearest multiple of ten dollars (\$10) in the case of a
19 penalty less than or equal to one hundred dollars (\$100).

20 (B) To the nearest multiple of one hundred dollars (\$100) in the
21 case of a penalty greater than one hundred dollars (\$100) but less
22 than or equal to one thousand dollars (\$1,000).

23 (C) To the nearest multiple of one thousand dollars (\$1,000) in
24 the case of a penalty greater than one thousand dollars (\$1,000)
25 but less than or equal to ten thousand dollars (\$10,000).

1 (D) To the nearest multiple of five thousand dollars (\$5,000) in
2 the case of a penalty greater than ten thousand dollars (\$10,000)
3 but less than or equal to one hundred thousand dollars (\$100,000).

4 (E) To the nearest multiple of ten thousand dollars (\$10,000)
5 in the case of a penalty greater than one hundred thousand dollars
6 (\$100,000) but less than or equal to two hundred thousand dollars
7 (\$200,000).

8 (F) To the nearest multiple of twenty-five thousand dollars
9 (\$25,000) in the case of a penalty greater than two hundred
10 thousand dollars (\$200,000).

11 (3) Inflation adjustments made pursuant to this subdivision shall
12 ~~be adopted as emergency regulations pursuant to exempt from the~~
13 ~~requirements of Chapter 3.5 (commencing with Section 11340) of~~
14 ~~Part 1 of Division 3 of Title 2 of the Government Code.~~
15 ~~Notwithstanding subdivision (b) of Section 11349.6 of the~~
16 ~~Government Code, the Office of Administrative Law shall not~~
17 ~~disapprove an emergency regulation adopted pursuant to this~~
18 ~~subdivision solely because it determines that the situation addressed~~
19 ~~by the regulation is not an emergency.~~

20 (b) If the department or a unified program agency seeks to
21 impose a penalty below the maximum levels set pursuant to this
22 chapter, as adjusted by subdivision (a), the department or unified
23 program agency shall calculate, and make express findings
24 concerning, the economic benefits, if any, derived by the violator
25 from the acts that constitute the violation. At a minimum, liability
26 shall be assessed at a level that recovers those economic benefits,
27 unless the department or unified program agency makes express
28 findings that document that good faith efforts to comply or inability
29 to pay justify a reduction and that the liability assessed will
30 maintain the deterrent effect of the penalty.

31 (c) The department shall report to the Legislature on the
32 implementation of this section.

33 SEC. 3. Section 42402.6 is added to the Health and Safety
34 Code, to read:

35 42402.6. (a) (1) The state board shall ~~adjust on an annual~~
36 ~~basis update, by February 15, 2010, and on January 1 annually~~
37 ~~thereafter,~~ all civil and administrative penalties imposed pursuant
38 to this division to adjust the maximum and minimum amounts
39 specified in this division ~~to take into account inflation using for~~
40 ~~inflation, as established by the amount by which the Consumer~~

1 Price Index for the month of June of the year prior to the
2 adjustment ~~as compared with~~ *exceeds the Consumer Price Index*
3 *for* June of the calendar year in which legislation was last enacted
4 establishing or amending the amount of the penalty.

5 (2) The amount of any penalties determined pursuant to this
6 subdivision shall be rounded as follows:

7 (A) To the nearest multiple of ten dollars (\$10) in the case of a
8 penalty less than or equal to one hundred dollars (\$100).

9 (B) To the nearest multiple of one hundred dollars (\$100) in the
10 case of a penalty greater than one hundred dollars (\$100) but less
11 than or equal to one thousand dollars (\$1,000).

12 (C) To the nearest multiple of one thousand dollars (\$1,000) in
13 the case of a penalty greater than one thousand dollars (\$1,000)
14 but less than or equal to ten thousand dollars (\$10,000).

15 (D) To the nearest multiple of five thousand dollars (\$5,000) in
16 the case of a penalty greater than ten thousand dollars (\$10,000)
17 but less than or equal to one hundred thousand dollars (\$100,000).

18 (E) To the nearest multiple of ten thousand dollars (\$10,000)
19 in the case of a penalty greater than one hundred thousand dollars
20 (\$100,000) but less than or equal to two hundred thousand dollars
21 (\$200,000).

22 (F) To the nearest multiple of twenty-five thousand dollars
23 (\$25,000) in the case of a penalty greater than two hundred
24 thousand dollars (\$200,000).

25 (3) Inflation adjustments made pursuant to this subdivision shall
26 ~~be adopted as emergency regulations pursuant to~~ *exempt from the*
27 *requirements of Chapter 3.5 (commencing with Section 11340) of*
28 *Part 1 of Division 3 of Title 2 of the Government Code.*
29 ~~Notwithstanding subdivision (b) of Section 11349.6 of the~~
30 ~~Government Code, the Office of Administrative Law shall not~~
31 ~~disapprove an emergency regulation adopted pursuant to this~~
32 ~~subdivision solely because it determines that the situation addressed~~
33 ~~by the regulation is not an emergency.~~

34 (b) If the state board or a district seeks to impose a penalty below
35 the maximum levels set pursuant to this division, as adjusted by
36 subdivision (a), the state board or district shall calculate, and make
37 express findings concerning, the economic benefits, if any, derived
38 by the violator from the acts that constitute the violation. At a
39 minimum, liability shall be assessed at a level that recovers those
40 economic benefits, unless the state board or district makes express

1 findings that document that good faith efforts to comply or inability
2 to pay justify a reduction and that the liability assessed will
3 maintain the deterrent effect of the penalty.

4 (c) The state board shall report to the Legislature on the
5 implementation of this section.

6 SEC. 4. Section 6437 is added to the Labor Code, to read:

7 6437. (a) (1) The department shall ~~adjust on an annual basis~~
8 *update, by February 15, 2010, and on January 1 annually*
9 *thereafter*, all civil and administrative penalties imposed pursuant
10 to this part to adjust the maximum and minimum amounts specified
11 in this part ~~to take into account inflation using for inflation, as~~
12 *established by the amount by which* the Consumer Price Index for
13 the month of June of the year prior to the adjustment ~~as compared~~
14 *with exceeds the Consumer Price Index for* June of the calendar
15 year in which legislation was last enacted establishing or amending
16 the amount of the penalty.

17 (2) The amount of any penalties determined pursuant to this
18 subdivision shall be rounded as follows:

19 (A) To the nearest multiple of ten dollars (\$10) in the case of a
20 penalty less than or equal to one hundred dollars (\$100).

21 (B) To the nearest multiple of one hundred dollars (\$100) in the
22 case of a penalty greater than one hundred dollars (\$100) but less
23 than or equal to one thousand dollars (\$1,000).

24 (C) To the nearest multiple of one thousand dollars (\$1,000) in
25 the case of a penalty greater than one thousand dollars (\$1,000)
26 but less than or equal to ten thousand dollars (\$10,000).

27 (D) To the nearest multiple of five thousand dollars (\$5,000) in
28 the case of a penalty greater than ten thousand dollars (\$10,000)
29 but less than or equal to one hundred thousand dollars (\$100,000).

30 (E) To the nearest multiple of ten thousand dollars (\$10,000)
31 in the case of a penalty greater than one hundred thousand dollars
32 (\$100,000) but less than or equal to two hundred thousand dollars
33 (\$200,000).

34 (F) To the nearest multiple of twenty-five thousand dollars
35 (\$25,000) in the case of a penalty greater than two hundred
36 thousand dollars (\$200,000).

37 (3) Inflation adjustments made pursuant to this subdivision shall
38 ~~be adopted as emergency regulations pursuant to~~ *exempt from the*
39 *requirements of Chapter 3.5 (commencing with Section 11340) of*
40 Part 1 of Division 3 of Title 2 of the Government Code.

1 Notwithstanding subdivision (b) of Section 11349.6 of the
2 Government Code, the Office of Administrative Law shall not
3 disapprove an emergency regulation adopted pursuant to this
4 subdivision solely because it determines that the situation addressed
5 by the regulation is not an emergency.

6 (b) If the division seeks to impose a penalty below the maximum
7 levels set pursuant to this part, as adjusted by subdivision (a), the
8 division shall calculate, and make express findings concerning,
9 the economic benefits, if any, derived by the violator from the acts
10 that constitute the violation. Notwithstanding any other provision
11 of law, at a minimum, liability shall be assessed at a level that
12 recovers those economic benefits, unless the division makes
13 express findings that document that good faith efforts to comply
14 or inability to pay justify a reduction and that the liability assessed
15 will maintain the deterrent effect of the penalty.

16 (c) The department shall report to the Legislature on the
17 implementation of this section.

18 SEC. 5. Section 13363 is added to the Water Code, to read:

19 13363. (a) (1) The state board shall ~~adjust on an annual basis~~
20 *update, by February 15, 2010, and on January 1 annually*
21 *thereafter*, all civil and administrative penalties imposed pursuant
22 to this division or pursuant to Section 25270.12, 25299, or
23 25299.76 of the Health and Safety Code to adjust the maximum
24 and minimum amounts specified in those provisions ~~to take into~~
25 ~~account inflation using~~ *for inflation, as established by the amount*
26 *by which the Consumer Price Index for the month of June of the*
27 *year prior to the adjustment* ~~as compared with~~ *exceeds the*
28 *Consumer Price Index for June of the calendar year in which*
29 *legislation was last enacted establishing or amending the amount*
30 *of the penalty.*

31 (2) The amount of any penalties determined pursuant to this
32 subdivision shall be rounded as follows:

33 (A) To the nearest multiple of ten dollars (\$10) in the case of a
34 penalty less than or equal to one hundred dollars (\$100).

35 (B) To the nearest multiple of one hundred dollars (\$100) in the
36 case of a penalty greater than one hundred dollars (\$100) but less
37 than or equal to one thousand dollars (\$1,000).

38 (C) To the nearest multiple of one thousand dollars (\$1,000) in
39 the case of a penalty greater than one thousand dollars (\$1,000)
40 but less than or equal to ten thousand dollars (\$10,000).

1 (D) To the nearest multiple of five thousand dollars (\$5,000) in
2 the case of a penalty greater than ten thousand dollars (\$10,000)
3 but less than or equal to one hundred thousand dollars (\$100,000).

4 (E) To the nearest multiple of ten thousand dollars (\$10,000)
5 in the case of a penalty greater than one hundred thousand dollars
6 (\$100,000) but less than or equal to two hundred thousand dollars
7 (\$200,000).

8 (F) To the nearest multiple of twenty-five thousand dollars
9 (\$25,000) in the case of a penalty greater than two hundred
10 thousand dollars (\$200,000).

11 (3) Inflation adjustments made pursuant to this subdivision shall
12 ~~be adopted as emergency regulations pursuant to exempt from the~~
13 ~~requirements of Chapter 3.5 (commencing with Section 11340) of~~
14 ~~Part 1 of Division 3 of Title 2 of the Government Code.~~
15 ~~Notwithstanding subdivision (b) of Section 11349.6 of the~~
16 ~~Government Code, the Office of Administrative Law shall not~~
17 ~~disapprove an emergency regulation adopted pursuant to this~~
18 ~~subdivision solely because it determines that the situation addressed~~
19 ~~by the regulation is not an emergency.~~

20 (b) If the state board, a regional board, or a unified program
21 agency seeks to impose a penalty below the maximum levels set
22 pursuant to this division or pursuant to Section 25270.12, 25299,
23 or 25299.76 of the Health and Safety Code, as adjusted by
24 subdivision (a), the state board, a regional board, or a unified
25 program agency shall calculate, and make express findings
26 concerning, the economic benefits, if any, derived by the violator
27 from the acts that constitute the violation. At a minimum, liability
28 shall be assessed at a level that recovers those economic benefits,
29 unless the state board, a regional board, or a unified program
30 agency makes express findings that document that good faith
31 efforts to comply or inability to pay justify a reduction and that
32 the liability assessed will maintain the deterrent effect of the
33 penalty. This subdivision does not affect the requirement to recover
34 economic benefits from a violator, imposed pursuant to subdivision
35 (e) of Section 13385.

36 (c) Except as provided in subdivision (k) of Section 13350 and
37 paragraph (2) of subdivision (n) of Section 13385, and in Sections
38 25270.12, 25299, and 25299.50 of the Health and Safety Code,
39 Code, proceeds from the implementation of subdivision (a) shall
40 be deposited in the Clean Water Civil Penalty Inflation Account,

1 which is hereby created in the General Fund, to be expended, upon
2 appropriation by the Legislature, consistent with Section 13441.
3 “Proceeds” as used in this subdivision means the amount of the
4 penalty imposed and collected that is above the amount that was
5 authorized before the maximum penalty was first adjusted pursuant
6 to subdivision (a).

7 (d) The state board shall report to the Legislature on the
8 implementation of this section.

9 SEC. 6. If the Commission on State Mandates determines that
10 this act contains costs mandated by the state, reimbursement to
11 local agencies and school districts for those costs shall be made
12 pursuant to Part 7 (commencing with Section 17500) of Division
13 4 of Title 2 of the Government Code.